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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

CASE NO.: 4:20-cv-03664-YGR

**DECLARATION OF JEREMY DAVIS IN
SUPPORT OF PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION**

Judge: Hon. Yvonne Gonzalez Rogers
Date: September 20, 2022
Time: 2:00 p.m.
Location: Courtroom 1 – 4th Floor

DECLARATION OF JEREMY DAVIS

Pursuant to 28 U.S.C. § 1746, I, Jeremy Davis, hereby declare as follows:

1. My name is Jeremy Davis. I am over eighteen years of age and am competent to testify to and have personal knowledge of the facts set forth herein.

2. I am a plaintiff in this lawsuit against Google, Inc. (“Google”). I value my privacy and to make sure my browsing activity is not tracked, I enabled Chrome’s Incognito mode by default, and about 90% to 95% of my browsing activity is done in Chrome’s Incognito private browsing mode. Jeremy Davis Depo. Tr., Mao Decl. Ex. 90, 33:7–25, 161:9–20.

3. When I signed up for my Google account in approximately 2005, I definitely read the Terms of Service and Privacy Policy before accepting them because it was a prerequisite to get the account. *Id.* at 91:6–92:20. Since then, I make it a habit of reading the updates to Google’s Terms of Service and Privacy Policy, like when I receive emails about the updates or read in news articles that they’re being updated. *Id.* at 57:14–58:16, 59:23–60:10, 80:24–81:14, 93:2–21. Google did not disclose that it would collect my private browsing activity while in Incognito and private browsing modes. *Id.* at 131:4–131:25, 132:1–7. To the opposite, Google said I was in control of the data Google can and cannot collect, like with Incognito private browsing mode that gave me the control over Google’s collection of private browsing activity. *Id.* at 65:6–9, 84:5–22, 94:20–95:8, 97:9–98:6, 104:13–105:2, 113:16–25, 119:16–20, 130:14–24, 131:13–15, 132:8–21. This was also explained in Google’s Search & Browse privately page. *Id.* at 128:10–129:8.

4. The Incognito splash screen also did not disclose that Google would collect my private browsing activity. *Id.* at 21:18–24:4, 169:14–24, 170:12–23. Google made two promises on that Incognito splash screen. First, that I could browse the web privately. *Id.* at 22:7–24:13. Then, other people who use the device won’t see my activity. *Id.* at 22:7–24:13. But Google never stated that it would still collect the private browsing activity when he used Incognito mode. *Id.* at 22:7–24:13. There is no ambiguity: the Incognito splash screen, Privacy Policy, and other Google disclosures (like Google’s “Search and Browse Privately” page) do not convey that

1 Google will collect my private browsing activity. *Id.* at 171:7–16.

2 5. Even though I was using Incognito mode and thought I was not being tracked, I
3 noticed advertisements were being tailored to my browsing habits. *Id.* at 71:19–72:2. A headline
4 about this lawsuit piqued my interest. *Id.* at 19:9–21:6. When I read about this lawsuit, this
5 advertisement activity made more sense, so I contacted my current counsel to learn more and
6 join the case. *Id.* at 19:9–21:6.

7 6. I joined this lawsuit with the understanding that the case has been brought as a
8 class action on behalf of two nationwide classes of individuals. The first nationwide class is:

9 Class 1 – All Chrome browser users with a Google account who accessed a non-Google
10 website containing Google tracking or advertising code using a browser and who were
11 (a) in “Incognito mode” on that browser and (b) were not logged into their Google
12 account on that browser, but whose communications, including identifying information
and online browsing history, Google nevertheless intercepted, received, or collected from
June 1, 2016 through the present.

13 7. The second nationwide class is:

14 Class 2 – All Safari, Edge, and Internet Explorer users with a Google account who
15 accessed a non-Google website containing Google tracking or advertising code using any
16 such browser and who were (a) in “private browsing mode” on that browser, and (b) were
17 not logged into their Google account on that browser, but whose communications,
including identifying information and online browsing history, Google nevertheless
intercepted, received, or collected from June 1, 2016 through the present.

18 8. I also understand that the case has been brought as a class action on behalf of one
19 sub-class of California residents.

20 9. I understand the Court has found a form contract exists composed of Google’s
21 Terms of Service, Privacy Policy, Chrome and Chrome OS Additional Terms of Service, Chrome
22 Privacy Notice, Incognito splash screen, the “Search and Browse Privately” page. Dkt. 363 at
23 13–23.

24 10. As a class representative, I understand I have a duty to protect the interests of the
25 classes. I will protect the best interests of the members of the classes and will work with my
26 attorneys to obtain success on behalf of those classes.

27 11. I know of no facts that would limit my ability to adequately represent the interest
28 of other members of the classes, or that my interests conflict in any way with the interests of the

1 classes.

2 12. I understand that I am a member of Class 1 because I used Chrome's Incognito
3 mode and visited non-Google websites. I was not logged into my Google account on the browser
4 when I visited those non-Google websites in Incognito mode. But I now know that Google still
5 collects, stores, and uses my private browsing activity without consent. *Id.* at 25:9–12, 29:25–
6 30:10, 65:6–9, 85:7–11, 96:20–97:4.

7 13. I have been and continue to be willing to do what is necessary to protect the
8 interests of the members of the classes. I have retained lawyers who have experience in class
9 action litigation. I have discussed this case with my lawyers on numerous occasions, and have
10 reviewed pleadings before they were filed. *Id.* at 12:21–14:11, 57:14–58:16, 67:22–71:5. I
11 provided deposition testimony for this case on January 7, 2022, and have responded to numerous
12 written discovery requests from Google. *Id.* at 157:6–21, 157:25–159:10, 159:11–160:14. I also
13 allowed Google to pull information from my account that is sensitive and confidential to me,
14 like my Google subscriber information. *Id.* I also helped gather information from my device
15 (with the help of my lawyers and experts) to submit to Google to help understand how Google's
16 tracking works. 160:15–161:20.

17 14. I am familiar with the claims that have been asserted in the case and have
18 remained apprised of the strategy employed in this litigation. I am committed to staying up to
19 date on any additional developments in this case by continuing to confer with my attorneys on a
20 regular basis.

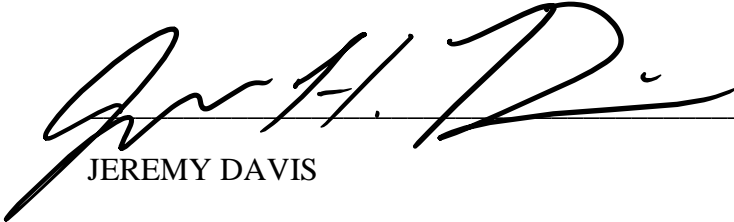
21 15. I am aware that there are expenses involved in representing classes, and have
22 arranged with my attorneys that the expenses will be paid by my attorneys and that they will
23 seek reimbursement of these expenses if a recovery is obtained.

1 16. I will appear at trial for this case.

2 I declare under penalty of perjury that the foregoing is true and correct.

3 Executed on June 20, 2022.

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JEREMY DAVIS